for it, as I mentioned, with a surtax on the wealthiest people in America. At the end of the day, out of 53 Democratic Senators, 50 voted yes, and 1 Republican Senator joined us. We had 51 votes in favor. It took 60 votes to pass, so it did not prevail.

Then Senator MCCONNELL had his chance. He brought to the floor the Republican alternative. They would extend the payroll tax cut by eliminating jobs—over 200,000 jobs in the Federal Government at a time when, frankly, we need more workers in veterans hospitals and we need more people working on medical research at the National Institutes of Health and we need more involved in law enforcement to keep America safe. But Senator MCCONNELL said that the way to pay any tax cut for working families is to eliminate Federal jobs. They called it for a vote. There are 47 Republican Senators on the floor. So how did the vote turn out when the Republicans called their proposal to extend the payroll tax cut? If I am not mistaken, only 20 Republican Senators voted for that proposal. In fact, Senator MCCONNELL was the only Member of the Senate Republican leadership who voted for the proposal.

So you have to ask, when it comes to the competition of ideas, who won that exchange? The answer is, no one won because at the end of the day we did not extend the payroll tax cut.

Back home in Chicago this last week, I had a press conference with a lady, a single mom, three kids, struggling with three jobs, with an annual income—combined income of less than $25,000 a year. I cannot imagine how she gets by. But she said that $50 more a month—that is what the payroll tax cuts means to her—would be significant—$50. That is how close so many people live to the edge.

It is time for us, in the closing days of the session before Christmas, to reach a bipartisan agreement to make sure the payroll tax cut is extended, to make sure the unemployment benefits that are needed so desperately by so many people out of work are there to help them and their families. The only way we can achieve that is in a bipartisan agreement. We now know that the notion of just cutting away at Federal jobs has been rejected soundly, even by the Republican side of the aisle. Let's come to a reasonable conclusion on how to pay for this in a manner that does not add to unemployment but adds more jobs to the American economy, something which most Americans agree should be our highest priority.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF CAITLIN HALLIGAN

Mr. GRASSLEY. Madam President, soon we will be taking up the nomination of Caitlin Halligan to the DC District Court. I oppose the nomination. This is why the nomination should not be confirmed.

Nominations to the DC Circuit deserve special scrutiny. The Court of Appeals, DC Circuit, hears cases affecting all Americans. This court frequently is the last stop for cases involving Federal statutes and regulations. Many view this court as second in importance only to our Supreme Court.

As we all know, judges who sit on the DC Circuit are frequently considered for the Supreme Court. So there is a lot at stake with any nominee appointed to the DC Circuit.

Ms. Halligan has an activist record. There are additional concerns regarding her judicial philosophy and her approach to interpreting the Constitution.

The second amendment, for instance, in 2003, Ms. Halligan gave a speech where she discussed her role in suing gun manufacturers for criminal acts committed with handguns.

At the time, Congress was debating the Protection of Lawful Commerce in Arms Act or, as most of us called it at the time, the gun liability bill. Those lawsuits, of course, were based on meritless legal theories and were specifically designed to drive gun manufacturers out of business.

As it turns out, while many of us were fighting in Congress to stop these nuisance lawsuits, Ms. Halligan was pursuing this precise type of litigation, based on the same bogus legal theories on behalf of the State of New York.

In New York v. Sturm, Ms. Halligan argued that gun manufacturers contributed to a public nuisance of illegal handguns in the State. Therefore, she argued that gun manufacturers should be liable for criminal conduct of third parties. The New York appellate court, however, explicitly rejected her theory. The court explained that it had ''never recognized [the] common law public nuisance cause of action'' that Ms. Halligan had advanced. Moreover, the court correctly concluded that ''the Legislative and Executive branches are better suited to address the societal problems concerning the already heavily regulated commercial activity at issue.''

While we were debating the gun liability bill, Ms. Halligan delivered a speech where she expressed her strong opposition to that legislation. She opposed it because it would stop the type of lawsuit she was pursuing. She said:

> If enacted, this would nullify lawsuits brought by nearly 30 cities and counties—including one filed by my office—as well as scores of lawsuits brought by individual victims or groups harmed by gun violence. . . . Such an action would likely cut off at the pass any attempt by States to find solutions—through the legal system or their own legislatures—that might reduce gun crime or promote greater responsibility among gun dealers.

Later in that same speech, she expressed her view of the law and legal system. She said:

> Courts are the special friend of liberty. Time and again, we have seen how the dynamics of our rule of law enables enviable social progress and mobility.

This statement is very troubling, especially as it relates to the nuisance lawsuit against gun manufacturers. Those lawsuits are a prime example of how activists on the far left try to use the courts to effect social policy changes they are somehow unable or unwilling to fight to achieve through the ballot box. That is why I believe those lawsuits represent not only bad policy but, more broadly, an activist approach to the law.

I am also concerned about Ms. Halligan's views on the war on terror and the detention of enemy combatants. This is especially troubling because Ms. Halligan is the nominee for the DC Circuit Court, where we know a lot of these issues are often heard.

In 2004, Ms. Halligan was a member of the New York City Bar Association that published a report entitled ''The Indefinite Detention of Enemy Combatants and National Security in the Context of the War on Terror.'' That report argued there were constitutional concerns with the detention of terrorists in military custody. It also argued vigorously against trying enemy combatants in military tribunals. Instead, it argued in favor of trying terrorists in civilian article III courts.

As I said, Ms. Halligan is listed as one of the authors of that report. But when it came to testifying at her hearing, Ms. Halligan tried to distance herself from that report. She testified she did not become aware of the report until 2010. In a followup letter after her hearing, Ms. Halligan did concede ''it is quite possible that [a draft of the report] was sent to me,'' but she could not recall reading the report.

I recognize memories fade over time. But as I assess her testimony, I think it is noteworthy that at least four other members of the committee abstained from the final report. Ms. Halligan did not.

I also point out that she coauthored an amicus brief before the Supreme Court in a 2009 case of Al-Marri v. Spagone. Ms. Halligan's brief in that case took a position similar to the 2004 report with respect to military detention of terrorists. In that case, she argued that the authorization for use of military force law did not authorize the seizure and indefinite military detention of a lawful permanent resident alien who conspired with al-Qaida to execute terror attacks on our country.

The fact that Ms. Halligan coauthored this brief, pro bono, suggests to

me she supported the conclusions reached by the 2004 report. Again, this issue is particularly troublesome for a nominee to the DC Circuit, where, as I have already said, many of these questions are heard.

There are a number of other aspects of her record that concern me. For instance, she authored an informal opinion on behalf of Attorney General Spitzer regarding New York's domestic relations law. That opinion invoked a theory of an evolving Constitution.

As New York's solicitor general, Ms. Halligan was responsible for recommending to the attorney general that the State intervene in several high-profile Supreme Court cases. She filed amicus briefs that consistently took activist positions on controversial issues, such as abortion, affirmative action, immigration, and federalism.

I will give you some instances. In Scheidler v. National Organization for Women, she supported NOW's claim that pro-life groups had engaged in extortion.

In the twin affirmative action cases of Grutter v. Bollinger and Gratz v. Bollinger, she argued that the use of race in college and law school admissions was not only appropriate but constitutional.

In Hoffman Plastics Compounds v. NLRB, she argued that the NLRB should have the authority to grant backpay to illegal aliens, even though Federal law prohibits illegal aliens from working in the United States.

Ms. Halligan represented New York in Massachusetts v. EPA, where a number of States argued that the Clean Air Act authorized and required the EPA to regulate automobile emissions and other greenhouse gases associated with climate change.

These are just some of my many concerns regarding the nominee's judicial philosophy and her approach to constitutional interpretation.

Based on her record, I do not believe she will be able to put aside her long record of liberal advocacy and be a fair and impartial jurist.

Yesterday, before the votes on the judicial nominations we confirmed, I made a few remarks regarding the history of this seat. So I will briefly review again the approach I have been arguing for more than a decade—and I had the support of other Senators—that there are too many seats and it is an underworked circuit. It may come as a surprise to some, but this seat has been vacant for over 6 years. It became vacant in September 2005, when John Roberts was elevated to Chief Justice of our Supreme Court. But it has not been without a nominee for all that time.

In June of 2006, President Bush nominated an eminently qualified individual for this seat, Peter Keisler. Mr. Keisler was widely lauded as a consensus bipartisan nominee. His distinguished record of public service included service as Acting Attorney General. Despite his broad bipartisan support and qualifications, Mr. Keisler waited 918 days for a committee vote that never came.

But Mr. Keisler was not the only one of President Bush's nominees to the DC Circuit to receive a heightened level of scrutiny. In fact, when President Bush was President, his nominees to the DC Circuit did not simply receive heightened scrutiny but were subjected to every conceivable form of obstruction.

Those of us who were here remember these debates very well: Estrada, Roberts, Griffith, Kavanaugh, Keisler, and Brown. All these nominees had difficult and lengthy processes. This included delays, multiple filibusters, multiple hearings, boycotting markups so we would not have a quorum to vote on their confirmation, including even invoking the 2-hour rule during committee markup and other forms of obstruction.

I have not suggested we repeat all the tactics used by the other side employed during the last Republican administration. I do believe, however, it is important to remind my colleagues of the precedents the other side established for nominees to this circuit.

There is one other relevant fact I would like to briefly discuss in connection with this vote; that is, the workload of the DC Circuit. That gets back to what I have already referred to—that it has been underworked compared to other circuits.

When Peter Keisler was nominated to the same seat, my friends on the other side objected to even holding a hearing for the nominee, based upon concerns about the workload of the DC Circuit. So here is something we tend to agree on, which has gone by the wayside now that we have a nominee from the President of the other party for this same seat. During Mr. Keisler's hearing, one of my Democratic colleagues summarized the threshold concerns. He said:

> Here are the questions that just loom out there: 1) Why are we proceeding so fast here? 2) Is there a genuine need to fill this seat? 3) Has the workload of the DC circuit not gone down? 4) Should taxpayers be burdened with the cost of filling that seat? 5) Does it not make sense, given the passion with which arguments were made only a few years ago, to examine these issues before we proceed?

So we have five very important questions that are applicable today from a Member on the other side of the aisle.

I have not heard these same concerns expressed by my friends on the other side with respect to Ms. Halligan's nomination. But that does not mean these issues have gone away.

Statistics from the Administrative Office of the U.S. Courts show that caseloads on the DC Circuit have decreased markedly over the last several years. This decrease is evident in both the total number of appeals filed and the total number of appeals pending. Specifically, the total number of appeals filed decreased by over 14 percent between 2005, when there were 1,379 appeals filed, and the year 2010, when only 1,178 appeals were filed.

The workload decline is also demonstrated in the per-panel and per-judge statistics. Filings per panel and filings per judge show a decline of nearly 7 percent during this period. Pending appeals per panel dropped over 9 percent.

When you examine the caseload statistics in relationship to other circuit courts, the DC Circuit ranks last in nearly every category. For instance, the DC Circuit has the fewest total appeals filed per panel and only half as many appeals filed per panel as the 10th circuit, which has the second fewest in the country. They have the fewest number of appeals terminated per judge. And again, they have roughly half as many terminations per judge as the second least busy circuit—again, the 10th circuit.

They have the fewest signed written decisions per active judge, with 57. By way of comparison, the second circuit has 5 times as many, with 270 per active judge. The 10th circuit has roughly 4 times as many, with 240 per judge. They have fewest total appeals terminated per panel, with 347.

By way of comparison, the 11th circuit had over 4 times as many total appeals terminated in 2010, with 1,574. The ninth circuit had nearly 4 times as many, with 1,394. And the second and fifth circuits each had 1,329.

Given these statistics, we should be having a discussion on reducing the staffing for this court, not filling a vacancy. This seat is not a judicial emergency. And with our massive debt and deficit, I don't understand why we would be spending our time and resources, particularly on a highly controversial nomination.

Given the concerns I have about Ms. Halligan's record on the second amendment, the war on terror, and other issues, my concerns regarding her activist judicial philosophy and the Court's low workload, I oppose this nomination, and I urge my colleagues to do the same.

I would note in closing the number of organizations expressing their opposition to this nomination: the American Conservative Union, the National Rifle Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Committee for Justice, Concerned Women of America, the American Center for Law and Justice, Heritage Action, Liberty Counsel, Family Research Council, Eagle Forum, and there are others.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, I understand morning business will now close.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.